Supreme Court, U. S.
FILED
JUL 15 1975
MICHAEL RODAK, JR., CLERK

No. 74-1575

In the Supreme Court of the United States

OCTOBER TERM, 1975

RICHARDSON INDEPENDENT SCHOOL DISTRICT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
J. STANLEY POTTINGER,
Assistant Attorney General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1575

RICHARDSON INDEPENDENT SCHOOL DISTRICT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, a school district of some 32,000 students (three percent of whom are black), seeks review of a court of appeals decision requiring it to desegregate an elementary school that was designed only for blacks when the district was racially segregated pursuant to Texas law and has had only black students in attendance in the intervening 20 years. In our view, the court of appeals correctly implemented well-established legal principles, and there is no reason for further review.

1. While this litigation began in 1970 with a lawsuit by the United States, the pending petition arises out of supplemental proceedings initiated to desegregate Hamilton Park Elementary School. Although the district court denied the motion for supplemental relief without findings or opinion (Pet. App. A7-A8), the court of appeals

found, *inter alia*, that (1) Hamilton Park was opened by petitioner in 1955 as the only school in the district for blacks regardless of residence (*id.* at A3); (2) although petitioner adopted geographic zones for elementary schools in 1965 (*id.* at A4), no whites have ever attended the school and 71 percent of all black elementary students in the district are assigned there (*id.* at A2); and (3) an official of the district testified that Hamilton Park could be desegregated by pairing or clustering it with one or more of three elementary schools, all of which were within three miles of Hamilton Park (*id.* at A5).

The court of appeals, having made this factual inquiry in accordance with this Court's decision in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S.1, reversed the district court's order and remanded with directions that petitioner be ordered to desegregate Hamilton Park Elementary at the beginning of the 1975-1976 school year.

2. In light of the foregoing facts, petitioner errs in suggesting (Pet. 18-21) that the district had earlier removed all vestiges of a dual school system by its 1965 conversion to geographic zones for elementary schools. The court of appeals correctly determined, on this record, that petitioner did not meet its burden of showing that the all-black composition of Hamilton Park was not the result of discrimination on the district's part, *Swann, supra*, 402 U.S. at 26. The decision in this case is consistent with analogous post-*Swann* decisions by the same court of appeals. See, *e.g.*, *Ellis* v. *Board of Public Instruction of Orange County, Florida*, 465 F.2d 878 (C.A. 5), certiorari denied, 410 U.S. 966.[1]

---

[1]Petitioner's contention (Pet. 14-18) concerning the court of appeals' asserted lack of deference to the district court's findings of fact is unavailing. The district court did not make such findings concerning Hamilton Park either in the original proceedings in 1970 (see Pet. App. A9-A20) or in the 1974 supplemental proceedings (*id.* at A7-A8).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General,
J. STANLEY POTTINGER,
Assistant Attorney General.

JULY 1975.